the court thus evaded the question instead of settling once and for all a dispute which has become so prominent in late administrations.

The decision is a very desirable one, however, from an economic standpoint, and shows a desire on the part of the court to aid in the efficient administration of government, and, since any attempt to take undue advantage of such authority can be readily checked by affirmative action of Congress, it seems highly advantageous that this administrative power be upheld. The decision cannot be construed as an extension of Executive power, or as sanctioning an encroachment by one of the three great departments upon the powers of another, the separation of which, as is said in *Kilbourn* v. *Thompson,* 103 U. S. 190, "is believed to be one of the chief merits of the American system of written constitutional government." R. B. O'H.

MUTUALITY OF CONTRACTS.—Two recent cases decided in the Supreme Courts of Kentucky and Missouri show very distinctly the uncertainty and dispute attendant upon contracts where the question is one of mutuality of obligation. The essential contract elements in both cases are almost identical, yet the two courts arrived at entirely different conclusions. In the Kentucky case the contract was found by the court to be that defendant agreed to receive and pay for all the ties that plaintiff *could* deliver. *Held,* that contract imposed on the plaintiff the duty of exercising reasonable diligence to procure and deliver all the ties he could. *Ayer & Lord Tie Co.* v. *O. T. O'Bannon & Co.,* (Ky. 1915) 174 S. W. 783. In the Missouri case the plaintiff agreed to furnish as many ties as his time, money and effort would permit up to 200,000, and though not bound to furnish the 200,000, to secure as many as he could using every possible means. *Held,* the contract was void for want of mutuality of obligation. *Hudson* v. *Browning,* (Mo. 1915) 174 S. W. 393.

In the second case the contract would seem to state as part of its terms that the plaintiff should do the very thing which the Kentucky court decided would make the contract of this sort binding, namely to impose the duty of exercising reasonable diligence to perform the contract. If the Kentucky court had undertaken to state specifically what would constitute reasonable diligence they certainly could not have required that a party do more than use "every means at their command, so far as time, money and effort will permit," and yet the Missouri court decides that this is not enough to make this contract mutually binding and enforceable.

A contract to be mutually binding must force an obligation on each party to do or permit to be done something in consideration of the act or the promise of the other; that is, neither party is bound unless both are bound. 7 ENCY. OF LAW, (2nd ed.) 114; PARSONS, CONTRACTS, (9th ed.) 486. The difficulty on the subject does not come from any dispute over the rule but from its application. Just when each party is bound is what causes the difference in decisions. Some courts go on the firm ground that in cases where the contract is for the delivery of a number of articles, as in these cases, unless one party is bound to deliver and the other party is bound to receive

a specific and ascertained number, the contract is void, more especially if the time of delivery is limited as it was in both these contracts. *Cold Blast Trans. Co.* v. *Kansas City Bolt and Nut Co.*, 114 Fed. 81; *Higbie* v. *Rust*, 211 Ill. 333; *Campbell* v. *American Handle Co.*, 117 Mo. App. 19. Then the majority of the courts go a step further and decide that in certain classes of cases, such as supplying articles for a business which is almost certain to need such articles, even though the exact number is not stated, yet both parties are bound, as it is not impossible to ascertain approximately the number required. *A. Klipstein & Co.* v. *Allen*, 123 Fed. 992; *Manhattan Oil Co.* v. *Richardson Lubricating Co.*, 113 Fed. 923; *Hickey* v. *O'Brien*, 123 Mich. 611. In this latter case the court said, "that the quantity which they agreed to take was to be measured by the necessity of their business, which is presupposed to continue for the time agreed." There is not a great deal of difficulty in taking this step, as it does not apparently leave the performance or non-performance of the contract in the hands of one party. Nearly all these courts have insisted, however, that this rule should apply only in cases where it is hard or impossible to ascertain beforehand the exact amount of goods to be furnished. They also say that the parties must have done everything in their power to make the contract as definite and certain as the situation would permit. As is said in the leading case of *Wells* v. *Alexander*, 130 N. Y. 642, "while at the date of agreement the quantity was indefinite, it was, nevertheless, determinable by its terms, and, therefore, certain." See also, *National Furnace Co.* v. *Keystone Mfg. Co.*, 110 Ill. 427; *East* v. *Cayuga Lake Ice Co.*, 21 N. Y. Supp. 887; *Burgess Fibre Co.* v. *Bloomfield*, 180 Mass. 283. Applying this more liberal rule it would seem that the Kentucky case is at least carrying it to the limit as there are no facts to show that the parties did not know how many ties they would need, nor had they made any very great efforts to make it as certain as possible, as is demanded by the courts adopting this rule. In the Missouri case, on the other hand, the parties had made far greater efforts and yet the court decided that the obligation was not mutual. L. C. McC.

CONSTITUTIONALITY OF COMPULSORY WORKMEN'S COMPENSATION STATUTES. —The recently enacted New York Workmen's Compensation Act (Chapter 816, Laws of New York, 1913) which became fully effective July 1, 1914, is a compulsory law. By this is meant that an employer of labor coming within the classifications set forth in Section 2 of the statute has no alternative but to accept its provisions. There is no such thing as electing to come or not to come in, although by section eleven of article two, an *employe* accidentally injured in the course of his employment, may in certain circumstances elect between a suit at law (in which the defendant, his employer, is not permitted to interpose any of the three affirmative defenses) and compensation under the statute.

The New York statute, therefore, may be taken as a fair type of law based squarely on the power of a legislature to pass a compulsory Workmen's Compensation Act under the police power of the state.